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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

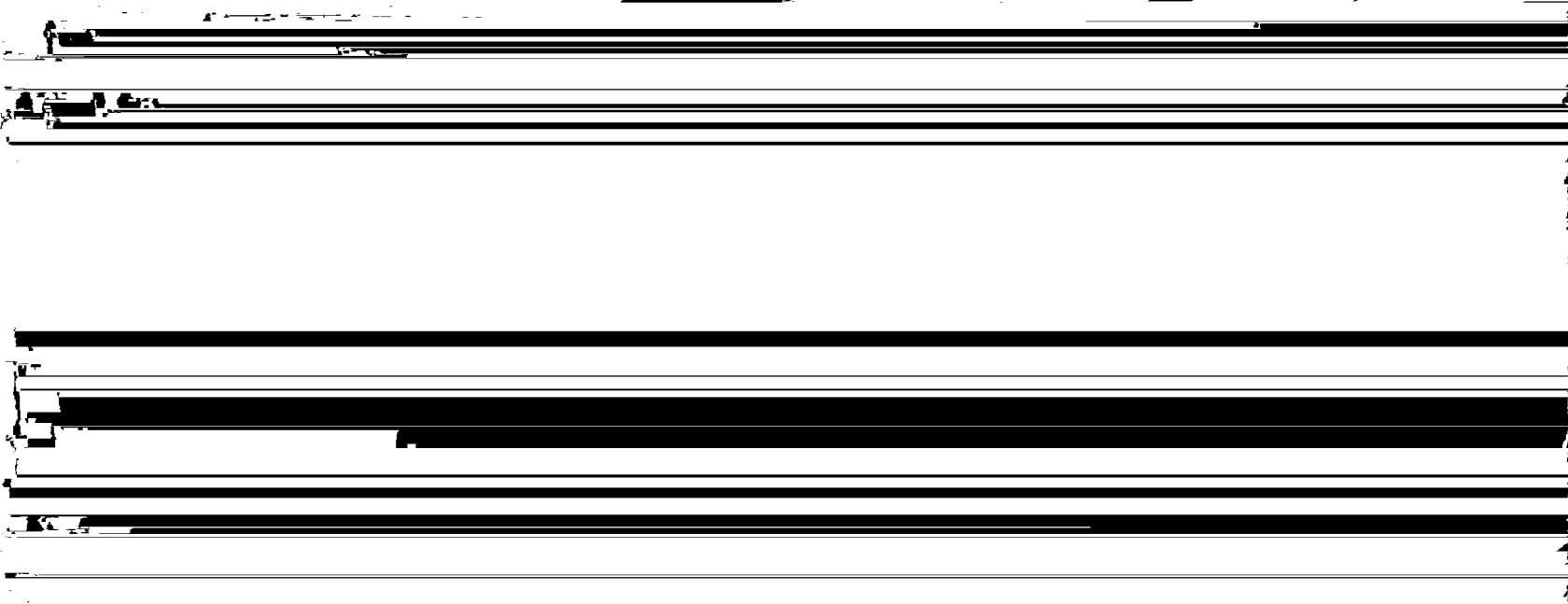
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM DOCKET NO. 93-88
)	
EZ COMMUNICATIONS, INC.)	File No. BRH-910401C2
)	
For Renewal of License of)	
Station WBZZ (FM),)	
Pittsburgh, Pennsylvania)	
)	
ALLEGHENY COMMUNICATIONS)	
GROUP, INC.)	File No. BPH-910628MC
)	
For Construction Permit for a)	
New FM Broadcast Station)	
Pittsburgh, Pennsylvania)	

To: Administrative Law Judge
Edward Luton

MASS MEDIA BUREAU'S
OPPOSITION TO MOTION TO CERTIFY

1. On May 5, 1993, EZ Communications, Inc. ("EZ") filed a Motion to Certify to the Commission the Hearing Designation Order in the above-captioned proceeding, 58 Fed. Reg. 19106, published



may request the presiding officer to certify to the Commission the question as to whether, on policy in effect at the time of designation or adopted since designation, and undisputed facts, a hearing should be held. If the presiding officer finds that there is substantial doubt, on established policy and undisputed facts, that a hearing should be held, he will certify the policy question to the Commission with a statement to that effect.

(Emphasis supplied). For the reasons set forth below, the Bureau submits that Section 1.115(e) (3) controls, not Section 1.106(a) (2).

3. As EZ concedes, the Motion is premised upon EZ's belief that the HDO erred in failing to dismiss the application of competing applicant Allegheny Communications Group, Inc. ("Allegheny") as violative of Section 73.316(b) of the Commission's Rules. The HDO held, at para. 20, that Allegheny's application would not be dismissed. Specifically, the HDO concluded that, although Allegheny's relative field tabulations showed that its proposal would violate Section 73.316(b), calculations based on Allegheny's more accurate ERP data established that the proposal is in compliance. EZ simply disagrees with the HDO in this respect, opining that the HDO relies on ERP data calculations which Allegheny performed incorrectly.¹

¹ Allegheny's variation appears to be a consequence of rounding off and reconvertng data to different degrees of precision. In this process, invariably, small variances in data are produced.


4. Because the Motion is clearly a request to certify the HDO, Section 1.115(e)(3) of the Commission's Rules governs. That Rule requires motions to certify to be filed within five days of the release of a hearing designation order, in this case, by April 12, 1993. Section 1.106(a)(2) of the Commission's Rules does not apply. That Rule provides for certification only when there is substantial doubt on established policy as to whether a hearing should be held and the facts are undisputed. The facts relied upon by EZ are a matter of dispute.

5. The basic fact relied upon by EZ is that Allegheny's application violates Section 73.316(b). The HDO correctly concluded otherwise. In fact, there is no substantial doubt as to whether the hearing in this proceeding should be held. EZ's own data confirms that, using the more accurate ERP data in table 2 of Allegheny's amended application, the rate of change would not exceed 2 db per 10 degrees.² See EZ's motion, Table C. Accordingly, even assuming EZ's motion were timely filed, certification under Section 1.106(a)(2) would not be warranted.


² EZ's Table C does indicate that Allegheny's rate of change would exceed 2 dB at the 55 and 120 azimuth if calculated to the fifth or sixth decimal place. It is not the Bureau's practice, however, to calculate compliance to such degrees of accuracy. Suffice it to say, at no azimuth does Allegheny's rate of change based on its more accurate ERP data round to a figure above 2.0 dB.

6. For the reasons set forth in the foregoing comments, the Bureau opposes EZ's Motion to Certify should be dismissed.

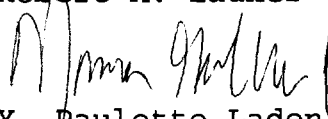
Respectfully submitted,
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May 14, 1993

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch Mass Media Bureau, certifies that she has, on this 14th day of May, 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Opposition to Motion to Certify"** to:

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